

**Methodology for integrating  
the cross-border dimension into the CoR's  
consultative work**

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# Introduction

The Committee of the Regions (CoR) has a **predominant role in cross-border cooperation**. The treaties grant it **consultative powers** in EU legislation and policies that involve cross-border cooperation. Article 307 TFUE (ex-article 264 TCE) states that "The Committee of the Regions shall be consulted [...] in all other cases, in particular those which concern cross-border cooperation [...]".

In order to give the cross-border dimension in the CoR's consultative works a higher profile, EIPA has been commissioned to provide methodology that ensures that this aspect is adequately reflected. The effective and systematic application of this methodology will reinforce the consultative role of the CoR according to the Treaties. EIPA is asked to propose methodological guidelines aimed at improving cross-border analysis of the documents of the European Commission (or of the other institutions where they consult the CoR) with a view to drawing up CoR opinions. The report will serve as a basis for the consultative works of the CoR. EIPA has established a research team made up of two experts (Martin Unfried and Gracia Vara) one researcher (Maria Kleis) and one intern (Alice Gaillard). The overall report has been coordinated by Gracia Vara, project leader.

The report contains an algorithm and tools (a preliminary grid and a basic questionnaire) for assessing the cross-border dimension in the legislative and non-legislative proposals of the European Commission. The aim is to define methodology for the Committee of the Regions<sup>1</sup> to adequately take into account cross-border cooperation<sup>2</sup> when it drafts an opinion on a proposal.

In accordance with the terms of the contract this final document is composed of:

- a conceptualisation of cross border cooperation (CBC);
- methodological guidelines (grid) to serve as a basis for the consultative works of the CoR, in order to facilitate cross border analysis of legislative and political initiatives, by categorising them according to the different types of impact on CBC issues. Then, on the basis of the category of each proposal, we will develop different consultation procedures to follow (algorithm);

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<sup>1</sup> Hereafter referred to as the CoR.

<sup>2</sup> Hereafter referred to as CBC.

- an analysis or evaluation of the work done and the political positions of the CoR in the different policy areas on CBC (2008-2010) – we will use the indicators provided in the grid in order to assess the performance of the CoR in the past.

This methodology applies to the CBC analysis of legislative and political initiatives only. Nevertheless, the methodology could be partially applied, *mutatis mutandis*, to the CoR's territorial impact assessment exercise, although as this report does not explicitly cover this aspect we do not include a model for this application.

# 1 Context and concept

European territorial cooperation has sought to move beyond the traditional concept of borders between the European Member States as “barriers” which delimit distinct socio-political realities, while at the same time helping to build Europe “from below” as a manifestation of the European general principle of subsidiarity.<sup>3</sup> In the specific context of the EU, the respective cross-border, regional and transnational programmes have established a concept of territorial cooperation which has broadened the concept of purely cross-border territorial cooperation that developed in the framework of the Council of Europe and was defined in the European Convention on cross border cooperation of territorial communities and authorities, signed in Madrid on 21 May 1980.

Cross border cooperation and territorial cooperation in general started to become truly relevant with the Maastricht and Amsterdam Treaties. The treaties initiated a trend toward increased decentralisation to local and regional authorities under the subsidiarity principle. The regional diversity and different basic conditions in Europe call for region-specific concepts and solutions and this is particularly true of cross-border cooperation.

The CoR’s conceptualisation of CBC has evolved over the years. In the 90s it was very important for the CoR to distinguish cross-border cooperation from all other territorial cooperation, such as transnational cooperation and interregional cooperation. As stated in a 1998 CoR opinion, cross-border cooperation is identified as being *between neighbouring local authorities straddling national frontiers*<sup>4</sup>. Unlike transnational cooperation, cross-border cooperation requires joint national borders and aims to integrate a common area which faces common issues. Water pollution, for instance<sup>5</sup>. Years later in its opinion on strategies for promoting cross-border cooperation<sup>6</sup>:

- Cross-border cooperation *implies bi-, tri- or multilateral cooperation between local and regional authorities [...] operating in geographically contiguous areas. This applies also in case of areas separated by sea*<sup>7</sup>.

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<sup>3</sup> Caceres, 2-3 May 2010, European Territorial Cooperation Summit: the EGTC and cross border cooperation. Spanish Presidency.

<sup>4</sup> Committee of the Regions Opinion CoR 145/98 fin on *Cross-border and Transnational cooperation between local authorities*, p 6.

<sup>5</sup> Ibidem.

<sup>6</sup> CoR 181/2000 final.

<sup>7</sup> Committee of the Regions, CoR 181/2000 fin, *Strategies for promoting cross-border and inter-regional cooperation in an enlarged EU – a basic document setting out guidelines for the future*, p3.

Moreover, it is important to stress the fact that this cooperation is strictly related to economic cohesion and development. Indeed, Professor Charles Ricq, in the “*Manuel de la coopération transfrontalière*” published by the Council of Europe, uses the definition of CBC quoted above and adds that the main objective of CBC is to create, in border areas, linked spaces to find common solutions to similar issues<sup>8</sup>.

Professor Ricq identifies the main fields of activity of cross-border cooperation. Those are environment and land-use planning, transport and telecommunications, economy and employment, social protection, health and accommodation for the border population and, finally, the area of education, research and culture<sup>9</sup>.

The Committee of the Regions' study on EGTC takes up this idea, stating that CBC makes it possible to counterbalance the handicaps of a region or location caused by proximity to an international border<sup>10</sup>. From this perspective, the aim of the CoR is to offset the disadvantages existing for some locations and construct a balanced, polycentric EU. In the same vein, the European Parliament Committee on Regional Development considers that certain border areas suffer especially from an obvious lack of competitiveness; therefore, CBC can be an important tool for regional development and a “factor in completing the single market”<sup>11</sup>.

Referring to all kinds of territorial cooperation (cross-border, transnational, interregional), the CoR states: “*Within a geographic framework, cooperation enables political authorities and administration at different levels to collaborate and promote common interests by improving living conditions for the populations concerned and pooling resources and know-how.*”<sup>12</sup> Thus, the **Committee of Regions** considers CBC to be a tool for territorial cohesion as well as one of the conditions for good multilevel governance. The CoR identifies it as a top priority for the EU, as it contributes to the creation of a *Citizen's Europe* and applies the European Union motto of unity in diversity by bringing countries and people together<sup>13</sup>.

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<sup>8</sup> Ricq, Charles, “Manuel de la coopération transfrontalière”, Council of Europe, June 2006, p. 17 & p. 41.

<sup>9</sup> Ricq, Charles, “Manuel de la coopération transfrontalière”, Council of Europe, June 2006, p. 109-120.

<sup>10</sup> Study of the Committee of Regions, *European Grouping of Territorial Cooperation*, CoR 117/2007, p 18.

<sup>11</sup> European Parliament, Committee on Regional Development, Working document “Objective 3: a challenge for territorial cooperation: the future agenda for cross-border, transnational and interregional cooperation”, 18.10.2010.

<sup>12</sup> Committee of the Regions, the Committee of the Regions' White Paper on Multilevel Governance, June 2009, p.29.

<sup>13</sup> Committee of the Regions, CoR 181/2000 fin, *Strategies for promoting cross-border and inter-regional cooperation in an enlarged EU – a basic document setting out guidelines for the future.*

Along these lines, the European Union adopted a new cooperation instrument with EC Regulation No 1082/2006 on a European Grouping of Territorial Cooperation (EGTC). Since 2006, this new legal instrument has been facilitating and promoting cross-border, transnational and interregional cooperation<sup>14</sup> and broadening the scope of CBC: unlike the aforementioned territorial cooperation in the EU by means of EGTCs, classic CBC in the framework of the Council of Europe does not allow participation of Member States as such, but only their local and regional authorities, limiting cooperation to contiguous or adjacent entities on one or other side of the border.

Nowadays, this cooperation aims to create cross-border regions (macro-regional development strategies). More specifically, the objectives of the current EU CBC programmes are:

- to encourage **entrepreneurship**, especially the development of SMEs, tourism, culture and cross-border trade,
- to improve joint management of **natural resources**,
- to support links between **urban and rural areas**, to improve access to **transport and communication** networks,
- to develop joint use of **infrastructure**,
- to work on administrative, employment and equal opportunities issues<sup>15</sup>.

Furthermore, it may be seen as testing the impact at regional and local level of actions which could be extended<sup>16</sup>.

Finally, for **Jens Gabbe**, former Secretary General of the Association of European Border Regions, CBC at regional and local level takes the form of cross-border euro regions or "associations" having a similar structure. These types of cooperation have characteristics in common. They are permanent, have a separate identity from their members, and have their own administrative, technical and

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<sup>14</sup> EGTC Regulation (EC) No 1082/2006, and the CoR Opinion on the Proposal for a Regulation of the European Parliament and of the Council establishing a European grouping of cross-border cooperation (EGCC), 18 November 2004.

<sup>15</sup> Regional Policy website *InfoRegio*, "Cooperation across borders", [[http://ec.europa.eu/regional\\_policy/cooperation/crossborder/index\\_en.htm](http://ec.europa.eu/regional_policy/cooperation/crossborder/index_en.htm)], consulted on 19.01.2011.

<sup>16</sup> Committee of the Regions, the Committee of The Regions' White Paper on Multilevel Governance, June 2009, p. 32.

financial resources and their own internal decision-making. For Gabbe, basically, cross-border cooperation can occur if there are joint interests defined by the two entities. In addition, CBC tends to put particular emphasis on social and cultural cooperation as well as economic infrastructural cooperation<sup>17</sup>.

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<sup>17</sup> Jens Gabbe, "Working Paper on Cross-Border Cooperation in Europe", Seminar on *Les Euroregions: Experiences I aprenatges per a l'Euroregio Pirineus Mediterrania*, Barcelona, 15-16 December 2005.

## **2 Criteria for preliminary grid to assess the potential impact of a given new proposal on the CBC dimension**

Based on the previously presented context and concept, and in order to design methodology to determine the potential impact of a given initiative of the European Commission on cross-border cooperation, EIPA proposes applying the following analysis grid: the grid consists of a five-step method. We will define first the principles, objectives, and good practices of CBC according to the definitions given below. Having done this, the next step is to propose a list of indicators, grading them by relative potential impact on CBC. Following the indicators, we will be able to grade the level of relevance of a given initiative for CBC (with coloured flags).

We wish to measure the potential impact of a given initiative on CBC. In short, we frame the underlying general features of cross-border cooperation (principles). Having done this, the second step is to define the processes that satisfy the framed principles (objectives). As a third step, to assure effective operation of the processes defined, we determine in advance the mechanisms/practices required, on the basis of theory and experience, to facilitate terms of comparison for the evaluation (*good practices*). Fourthly, we establish indicators measuring existing practices and potential features of CBC.

This system is designed to enable us to carry out a simple, systematic analysis of cross-border aspects. The indicators will facilitate fast identification of these aspects in the initiatives.

<b>Principles</b>	<b>Objectives</b>	<b>Good practices</b>	<b>Indicators</b>	<b>Scoring: 0-20</b>
These are the underlying general features of cross-border cooperation which need to be implemented in particular territories and governance systems. These principles are axiomatic, in the sense that they are taken as true and serve as the fundamental points of reference for the whole exercise.	These are the ways in which the principles are implemented in the specific context of EU policymaking. To the extent that these processes can be verified to be operating, one can say that the principles are being satisfied.	These are the respective sets of specific practices which are required in the EU policy context in order to ensure effective operation of each of the processes identified previously. These need to be defined in advance, on the basis of theory and experience, in order to establish concrete terms of comparison for the evaluation. They are defined in ways which allow for objective measurement. They will have different forms and relative weightings in different policy fields, according to the respective relevance of the cross-border aspects.	These are the measurements of existing practices, made according to the same terms identified previously.	This is the number of points given to a particular initiative, indicating the level of relevance for CBC.

In this grid, our intention is to highlight indicators which can be identified quickly in the initiative. We do not look for explicit references to CBC principles and objectives in the written text of the proposal, but rather to the existence or non-existence of potential features of CBC within that text, to be able to measure of objectives and good practices according to the different indicators.

We have therefore established measurements of relevance (grading indicators) for CBC, in accordance with the same terms as identified previously: by following the

indicators and scoring their importance (from 0 to 20), we can grade the different proposals with coloured flags:

**According to the grade of impact determined by each indicator, we score from 0 to 20, and depending on the number of points awarded, we grade the initiative with a coloured flag:**

**From 1 to 5 points: Initiative with low impact on CBC = Green flag = Very few of the aspects of cross-border cooperation are present, the initiative hardly takes this dimension into consideration at all.**

**From 6 to 10 points: Initiative of medium impact on CBC = Yellow flag = The initiative deals with few aspects with a cross-border dimension**

**From 11 to 15 points: Initiative of high impact on CBC = Orange flag = The initiative refers to many of the indicators of a cross-border dimension**

**From 16 to 20 points: Initiative directly related to CBC = Red flag = The initiative deals seriously with most of the indicators of a cross-border dimension, and so it is directly related to cross-border cooperation**

## 2.1 The step-by-step methodology

We wish to measure the potential impact of a given initiative on CBC. In order to measure we need to define measurable data. This report has defined the unit of analysis (Cross border cooperation) conceptualising the general principles of CBC as a guideline ( mutual and internal development, partnerships, co-financing, common problem resolution, mutual learning, common legal framework and management structures), defining three overall objectives (**integration; regional competitiveness and employment; and territorial cooperation**), which help us to detect the good or bad practices (potential and gaps), which are measured according to pre-established indicators.

As explained by Hooghe *et al*<sup>18</sup>, all measurements are questionable, and it is necessary to specify measurement procedures as precisely as possible. Hence, researchers have carefully considered their conceptual decisions, and examined the chosen measurements from every angle.

### Phase one: Principles

We wish to measure the potential impact of a given initiative on CBC. It is therefore necessary to frame the general features of cross-border cooperation (principles): the CBC principles are the underlying general features of cross-border cooperation which need to be implemented in particular territories and governance systems. These principles are axiomatic, in the sense that they are taken as true and serve as the fundamental points of reference for the whole exercise.

Eipa has chosen as the overall guiding principle *mutual and internal development*, from which others derive (largely based on structural funds principles), such as partnerships, co-financing, common problem resolution, mutual learning, common legal framework and management structures, etc.

### Phase two: Objectives

The CBC objectives in which *mutual and internal development* are implemented have been summarised in three overall objectives: **integration** of a common area divided by national borders through addressing common challenges; improvement of **regional competitiveness and employment** in this common area (economic and social development); and **territorial cooperation**.

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<sup>18</sup> Liesbeth Hooghe, Gary Marks and Arjan Schakel “The rise of regional authority” Routledge 2010, page 3.

Objectives considered in this grid derive – among others – from the following sources:

- the European Parliament Committee on Regional Development Working Paper on “Objective 3: a challenge for territorial cooperation: the future agenda for cross-border, transnational and interregional cooperation” of November 2010<sup>19</sup>;
- CoR Opinion of 19 November 1998 on Cross-border and transnational cooperation between local authorities<sup>20</sup>.

### Phase three: Good practices

We have highlighted the **good practices** of CBC, namely the respective sets of specific practices which are required in the EU policy context in order to ensure effective operation of each of the processes identified previously. These need to be defined in advance, on the basis of theory and experience, in order to establish concrete terms of comparison for the evaluation. They are defined in ways which allow for objective measurement. They will have different forms and relative weights in different policy fields, according to the respective relevance of the cross-border aspects.

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<sup>19</sup> PE450.843v02-00.

<sup>20</sup> CoR 145/98 fin.

Objectives	Good practices	
Integration	Cooperation on basic rights, freedom of movement, coherence of a legal framework, common administrative settings, integration of national economies	<i>Indicator 1</i>
Regional competitiveness	Improving the operation of the internal market, establishing facilities for workers, encouraging cross-border entrepreneurship, coordinating social policies and healthcare, enhancing regional economic exchange.	<i>Indicator 2</i>
Territorial cooperation	Improving joint management of natural resources, supporting links between rural and urban areas, improving transport and communication networks and coordinating policies on environment issues.	<i>Indicator 2</i>

#### Phase four: Indicators

From these elements, we produced **indicators** which are the measurements of existing practices, obtained using the criteria identified previously. Of the three main objectives highlighted, and the derived good practices, we defined several indicators, sub-grouping them into two blocks: one called “Measurement of the political, legal and administrative impact” (*Indicator 1*) “and the second named “Impact on social and territorial capabilities” (*Indicator 2*) (see Annex 1). Derived from each indicator, a series of subquestions have been identified. The answers to the subquestions provide data which allows the researchers to measure the potential impact. Naturally, the weighting is relative and subjective and we have to consider that any measure is always sensitive to its individual components.

Indicators Stem question	Sub questions
<p><i>Indicator 1</i> - Measurement of the political, legal and administrative impact (Max. 10 points)</p>	<ul style="list-style-type: none"> <li>●Need for coordination of national transposition into national legislation (max. 2 points)</li> </ul> <hr/> <ul style="list-style-type: none"> <li>●Institutional impact on cross-border organisations (EGTC or other forms of cooperation). (Grade from 0 to 3 points as distributed); <ul style="list-style-type: none"> <li>•Impact on “basic cooperation” structure, being planned or at an early stage, managing exchange of information, experience or mobility of people. <i>In the case of CBC along external borders, take into account cooperation promoting cross-border “people-to-people” actions.</i> (1 point)</li> <li>•Impact on “temporary cooperation” structure setting, fixed-term pilot project. (2 points)</li> <li>•Impact on “ongoing cooperation” structure, allowing implementation of powerful legal and administrative instruments, such as the European Grouping of Territorial Cooperation. ( 3 points)</li> </ul> </li> </ul> <hr/> <ul style="list-style-type: none"> <li>●Impact on joint administrative settings and coordination mechanisms. (max. 3 points)</li> </ul> <hr/> <ul style="list-style-type: none"> <li>●Impact on the involvement of LRA in policy making in the particular policy field. <i>In the case of external border CBC, take into account the impact on participatory democracy.</i> (max. 1 point)</li> </ul>
<p><i>Indicator 2</i> - Impact on social and territorial capabilities (Max. 10 points)</p>	<p><i>Subquestions:</i></p> <ul style="list-style-type: none"> <li>●Impact on the comparative competitiveness of cross-border regions. <i>In the case of CBC along external borders and across the sea, take into account the effect on disparities in living standards.</i> (From 0 to 2 points)</li> <li>●Impact on cross-border employment /cross-border workers. (max. 1 point)</li> </ul>

Indicators Stem question	Sub questions
	<ul style="list-style-type: none"> <li>● Impact on cross-border infrastructures (land-use and development planning, communication, transport, energy) <i>In the case of CBC across the sea, take into account the impact on accessibility. (From 0 to 2 points)</i></li> <li>● Impact on the environment. (max. 1 point)</li> <li>● Impact on mobility of people. (max. 1 point)</li> <li>● Impact on intercultural understanding and joint cultural projects and cooperation in the field of education and science. <i>In the case of CBC across sea, take into account the impact on cultural proximity. (From 0 to 2 points)</i></li> <li>● Impact on regional/local funding. (max. 1 point)</li> </ul>

Through the recurrent question “*Is this initiative likely to affect the cross-border area in terms of ... ?*” the evaluator will fill up the grid of indicators.

***For example***, if the initiative implies a need for coordination of national transposition into national legislation, it is likely to have an impact on cross-border cooperation. Thus, the evaluator will revise the weight given to that indicator: (max. 2). The evaluator will therefore have to give this 2 points. Furthermore, if the initiative deals with the issue of mobility of people, it could also have an impact on cross-border mobility: if so, the analyser will revise the weight given to the indicator (max. 1). They will therefore give 1 point for “impact on mobility of people”.

In order to evaluate the level of impact of the initiative on cross-border organisations, we first have to assess the existing level of institutionalised cross-border cooperation. Therefore, we have established three levels of cooperation structures for CBC.

On the basis of previous CoR opinions on cross-border and transnational cooperation between local authorities<sup>21</sup>, EIPA has established three levels in the process leading to cross-border cooperation structures. The first level is, in general, a basic structure of cooperation: managing exchange of information, experience, or promoting mobility and cross-border “people-to-people” actions. The second level reflects a higher stage of institutionalised cooperation. More than constituting a mere exchange of information, the so-called “temporary cooperation” establishes structure by setting fixed-term pilot projects.

The third level embraces the previous two and goes even further. “Ongoing cooperation” involves major cooperation, which benefits from a fixed structure and may enable powerful legal and administrative instruments to be implemented. The analyser will have to determine whether the initiative can have an impact on one of these cooperation structures, taking into consideration the possible improvement on the existing situation.

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<sup>21</sup> CdR. 145/98 fin.

## 2.2 Flagging exercise experiences

It is clear that, in practice, Commission communications or legislative proposals have to be analysed beyond the questions raised by the Commission. This means, in particular, that referring to subsidiarity and the role of regional and local authorities does not necessarily mean that cross-border aspects have been taken into account.

The example of the Proposal on Urban Mobility<sup>22</sup> shows that cross-border aspects are, to a large extent not mentioned by the Commission. In our proposed methodology, the person carrying out the evaluation has to consider potential implications (why not cross-border mobility plans, possibilities for cross-border planning, etc.?) even if they are beyond the scope of the Commission's deliberations.

In this regard, the urban mobility proposal is a good example. The possibility and requirements for joint cross-border urban mobility plans are not mentioned at all. Nevertheless, drawing up urban mobility plans in a cross-border situation will have implications or create tasks for cross-border coordination bodies (ad-hoc or structured). It could, for instance, lead to tension if structured mobility coordination exists, but without having the possibility of being involved in urban mobility planning.

Therefore, the evaluator should start with a very independent view and look beyond the actual document. Clearly, the exercise has to be very subjective and that the results of a flagging exercise have to be discussed within a team in the Committee of the Regions. Finally, the CoR is searching for aspects that are not mentioned or have been overlooked by the Commission. Only a proactive approach will identify interesting points that could be raised later on in the CoR opinion.

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<sup>22</sup> COM (2009) 490 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Action Plan on Urban Mobility.

## **2.3 Drawing up questionnaires for the process of consultation**

Once the Commission initiative has been attributed a score and coloured flag, the evaluators will be able to decide which type of consultation they will perform for the drafting of the CoR opinion. Following the CoR order form, three types of actions can be decided upon (pages: 3-4 of the order form):

- red and orange flagging (high impact): consultation with stakeholders, including associations and cross-border structures (EGTCs, Euro-regions, CBC program);
- yellow flagging (medium impact): consultation with specialised associations;
- green flag (low impact): desk research.

The consultation processes will be conducted using the proposed questionnaire in Annex 2.

EIPA proposes a single questionnaire model, which is broad and clear enough to be used in both the general consultation (of all stakeholders) and targeted consultations (of specialised stakeholders). In our view, this choice will make it easier for the CoR to implement the methodology. By means of short, direct questions, we propose to cover the areas assessed in the grid, with the intention of helping the CoR to better evaluate which aspects should be highlighted when drawing up the opinion. The questionnaire is designed using the indicators proposed in our grid. By adopting a cross-sectoral approach, it will ensure that the responders tackle all the different aspects of cross-border cooperation, which will latter be mentioned in the Opinion.

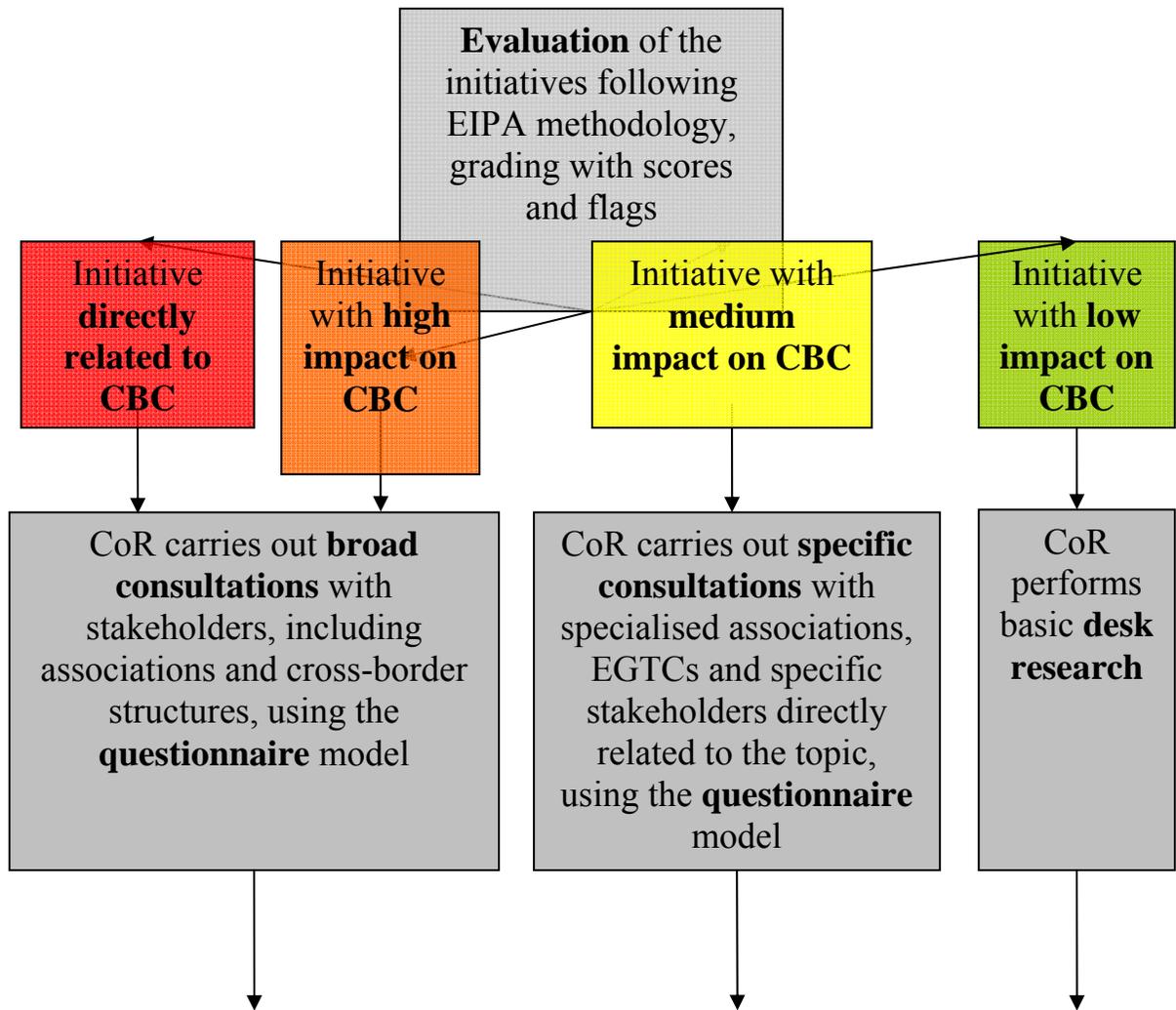
The flexibility of this approach allows the CoR evaluators – at their expert discretion - to adapt it to the objectives of the specific consultation following the different flagging.

As set out in this proposal, the questionnaire is appropriate for a wide public and can therefore be used for a broad consultation. In the event of consultation with specialised associations, adaptations will need to be made in order to focus on targeted areas.

## 2.4 Grid applied to case studies

In order to test the real functioning of our grid, we decided to apply this methodology to the initiative from which the CoR opinions to be analysed stem. This exercise has allowed us to illustrate how it functions and to assess the efficiency of the tool. (See Annex 4)

## 2.5 Algorithm



### **3 EIPA evaluation of consideration of CBC aspects in CoR opinions (years 2008-2010)**

The *Bon de Commande* asks EIPA to evaluate the performance of CoR opinions related to CBC aspects: *in the past, has the CoR adequately considered CBC issues in its opinions?*

In order to be able to answer this question, we have been asked to check two mandatory opinions per CoR commission (years 2008-2010), if possible based on proposals that were subject to an impact assessment by the European Commission. The *Bon de Commande* then asks us to select at least six cases since 2008 where consultation has been optional.

For the opinion evaluation exercise we selected a number of opinions – broken down by CoR commission - which would constitute a representative range of the CoR opinions in the reference period.

This is a single exercise carried out by EIPA’s expert team: the CoR will not have to apply the same analysis.

Our intention was to select, for each CoR commission, at least three opinions: one mandatory opinion in which we were expecting the cross-border dimension to be highly relevant and obvious, a second mandatory opinion which was expected to have a lower impact on cross-border cooperation and a third opinion, from an optional referral.

We were mainly searching for mandatory opinions, but according to the legal basis of the opinions drawn up by the CIVEX commission between 2008 and 2010, none of them were mandatory referrals. They all said they were own-initiative opinions or optional referrals (Article 307 TFEU). For this reason we decided to work on opinions distributed per CoR commission, regardless of whether or not they were mandatory, which seemed to be relevant to the cross-border dimension analysis.

Furthermore, we also ensured, where possible, that we chose case studies which had been subject to an impact assessment by the European Commission, where possible. Thus, we would be able to gain a global view of all of the types of cases on which the CoR is likely to be consulted.

As reported by a CoR publication “*A new treaty, a new role for regions and local authorities*”, the Lisbon Treaty gives the CoR new policy areas to cover, such as energy and climate change, service of general interest, social, public and infrastructure services, etc. Article 307 of the TFEU states that “The CoR shall be consulted [...] in all other cases, in particular those which concern cross border cooperation [...]” but the consultation of the CoR is also mandatory for all EU laws in the following areas:

- economic, social and territorial cohesion;
- trans-European networks;
- transport;
- telecommunications and energy;
- public health;
- education and youth;
- culture;
- employment;
- social policy;
- environment;
- vocational training;
- climate change<sup>23</sup>;
- defining the tasks, priorities and organisation of the Structural Funds;
- implementing the ERDF<sup>24</sup>.

The first step was a screening exercise involving all CoR opinions from the period 2008-2010. We tried to find an appropriate sample, applying the following criteria:

- having a good spread of opinions from the different commissions (if possible two per commission);
- identifying interesting cases according to the above-mentioned list of policy areas;
- identifying a balanced spread of opinions from the years 2008-2010.

On the basis of the screening exercise, we propose the following list, aware that we have not always managed to select two mandatory opinions per commission. This

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<sup>23</sup> Committee of the Regions, *A new treaty, a new role for regions and local authorities*, CoR publications.

<sup>24</sup> Articles 149; 151; 152; 156; 159; 161; 162 TFEU.

is due to the other criteria mentioned and the basic idea that the list should be a good reflection of interesting cases from a variety of policy fields.

The complete list of CoR opinions we chose to be analysed is set out in Annex 3.

### **3.1 EIPA applied methodology adopted for the assessment of previous CoR opinions**

Following the *Bon de Commande* we applied the same methodology to the assessment of past CoR opinions in relation to CBC as we had to the assessment of EU initiatives. It was a clear opportunity to test the efficiency of our previously-proposed grid; we would first analyse the legislative initiative (EU initiatives, communications), answering the question “*Is this initiative likely to affect the cross-border area in terms of ... ?*”, by filling in the grid of indicators, and grading the initiative with a coloured flag as explained in Part I.

A second exercise would consist of taking the subsequent CoR opinion, following the same grid, and answering a different question: “*Has the CoR considered all the aspects of the initiative that (might) (directly or indirectly) affect CBC?*” We graded the CoR treatment of cross-border aspects, following the same grid, and giving an equivalent score (from 0 to 20).

Applying the same grid to two different types of documents, and trying to answer two different types of questions, were only possible thanks to a consolidated and fixed team of five people applying scores according to the same agreed evaluation subjective criteria. A team of five people were involved in coding the documents, using the methodology described above.

Since the words “cross-border areas” or “cross-border cooperation” are very seldom found in either EU initiatives or CoR opinions, we decided not to work on the basis of the word frequency. Instead of merely looking for the frequency of the exact occurrence of the keywords of cross-border cooperation, we tried to detect manifest and latent references to the concept. A system of double-checking by different team members ensured an analysis that was as objective as possible, in a subjective scoring exercise such as this. The aim of the double-checks was to maintain a common interpretation of the criteria used in the grid. This exercise is a one-off evaluation, which will not have to be performed by the CoR.

The grading was higher or lower depending on the extent of the CoR's treatment of the cross-border aspects, (regardless of whether the CoR tackled the issue from a positive or negative perspective), and not taking into account the score attributed to the legislative initiative on CBC.

What we were looking for was coherence between the results of the grading of the initiative and the CoR opinion with flags. Indeed, if the initiative is not likely to have any impact on cross-border areas, then, logically, the CoR does not need to treat cross-border aspects in an opinion.

Therefore, if the grading of the initiative is low, as well as the grading of the opinion, there is overall consistency, and therefore appropriate treatment of CBC aspects.

It should not be overlooked here that we are analysing a number of opinions giving us an overview of all of the types of topics the CoR is likely to deal with, including some opinions that may not be relevant in terms of cross-border cooperation.

Finally, in order to better visualise the exercise, we decided to present the two evaluations in one single table, enabling the analyser to easily compare both and draw conclusions about the treatment of the cross-border dimension.

### **3.2 Presentation of preliminary findings in analysis of CoR opinions**

1. Although we were not looking for the frequency of the occurrence of the phrase “cross-border cooperation”, it is very striking that the keywords related to cross-border cooperation seldom, if ever, appear. In fact, even in the cases in which the cross-border items are addressed by the opinions analysed, the expression “cross-border cooperation” is never used.

2. Also, in none of our cases, even the ones obviously dealing with cross-border issues such as the opinion on the Baltic Sea Strategy<sup>25</sup> or the opinion on Urban Mobility<sup>26</sup>, the cross-border aspect is not presented in the main points and/or taken up in the impact assessment made by the CoR: in most of the opinions we examined, the specific case of cross-border cooperation is simply not tackled.

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<sup>25</sup> CdR 255/2009 final.

<sup>26</sup> CdR 256/2009 final.

3. Nevertheless, there are also examples of good practices: for instance, in the case of *the Stockholm Programme*<sup>27</sup>, the opinion does not mention the case of border regions within the Area of Freedom, Security and Justice. However, as it deals with the issue of cross-border crime and cross-border flows of people, it is possible to apply some of the indicators. In this specific case, we noticed a certain balance between the scores awarded to the initiative and the opinion, even though it could still be perfected. In fact, using the flagging system, the initiative has been graded as high-impact with 11 out of a maximum 20 points, and, using the scoring system, following its treatment of the cross-border aspects, with 10 out of a maximum 20 (although it does not focus as strongly as the EU initiative on cross-border cooperation in the Area of Freedom, Security and Justice).

4. We also detected lessons for improvement. In many cases, only some of the cross-border aspects are taken into consideration. In the case of the *Strategy for the Baltic Sea region* the CoR is – in our view – mostly looking at the legal and administrative aspects of the cross-border issue<sup>28</sup> rather than the social and territorial dimension. In the case of *University-Business dialogue*<sup>29</sup>, the CoR mostly caters for the dimension of cross-border mobility, without sufficiently considering – in our view - the legal, administrative or cultural dimensions.

5. One could also argue that it sometimes seems as if the CoR focuses on issues, notably subsidiarity, multilevel governance and the role of local and regional authorities, at the expense of the cross-border dimension. This was the case, for example, in the Opinions on a *Renewed European strategy investing in youth*<sup>30</sup>, *Emission allowance trading*<sup>31</sup>, and the *Promotion of renewable energy*<sup>32</sup> - cases which, we believe could have also provided a good opportunity to tackle cross-border cooperation.

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<sup>27</sup> CdR 201/2009 final.

<sup>28</sup> CdR 255/2009 final.

<sup>29</sup> CdR 157/2009 final.

<sup>30</sup> CdR 97/2009 final..

<sup>31</sup> CdR 161/2008 final.

<sup>32</sup> CdR 160/2008 final.

### **3.3 Visualising the results: evaluation of legislative initiatives; the CoR's treatment of CBC in its opinions**

In order to provide a visual overview of our results, we have drawn up charts summing up the grades of each assessment. In two parallel columns, we present the grading of the EU initiative and the grading of the related CoR opinion. There are numerous elements that explain the results which appear. The opinions deal with cross-border issues to different degrees, sometimes for political reasons: the rapporteur and the CoR members decide whether and how to deal with cross-border issues and to what extent. Hence, the results presented here should be utilised with prudence. Finally the results achieved in this way must be interpreted with caution.

#### Factors hindering and contributing to the analysis methodology

We are aware that this is one way of presenting the results, which does not have to be exclusive. The limitations of this evaluation exercise are clear: we are using the same analysis grid for two different types of exercise, and this has evident hindering factors.

The analysis of the opinion is very different from the flagging exercise of EU initiatives. It was an exercise in its own right. Higher points do not mean that the performance of the opinion is better as such. There are cases where the questions raised (impact on cross-border coordination) are not relevant so it is normal not to address them. Also, here, the evaluator had to look beyond the Commission document and beyond the aspects mentioned by the CoR: the evaluator made their own assessment of which type of implications should have been mentioned in the opinion. In the cases of urban mobility and the automotive industry, for example, it was interesting that the CoR did not mention cross-border aspects. There, it was clear that a broader debate on possible implications could have been included. The reason why this did not happen probably leads to the core issue: only with a proper flagging exercise that allows thinking beyond the Commission's ideas and proposed provisions can important cross-border implications be discovered.

Having said this, we also need to consider the contributing factors: namely that this was a one-off exercise carried out by a set team of people, working under the same principles, producing a consolidated chart, which highlights interesting findings. These findings are meant to contribute in a constructive way to the preparatory work on future CoR opinions, by inviting its experts to take a broader and more ambitious approach to CBC aspects.

## Interpreting the results

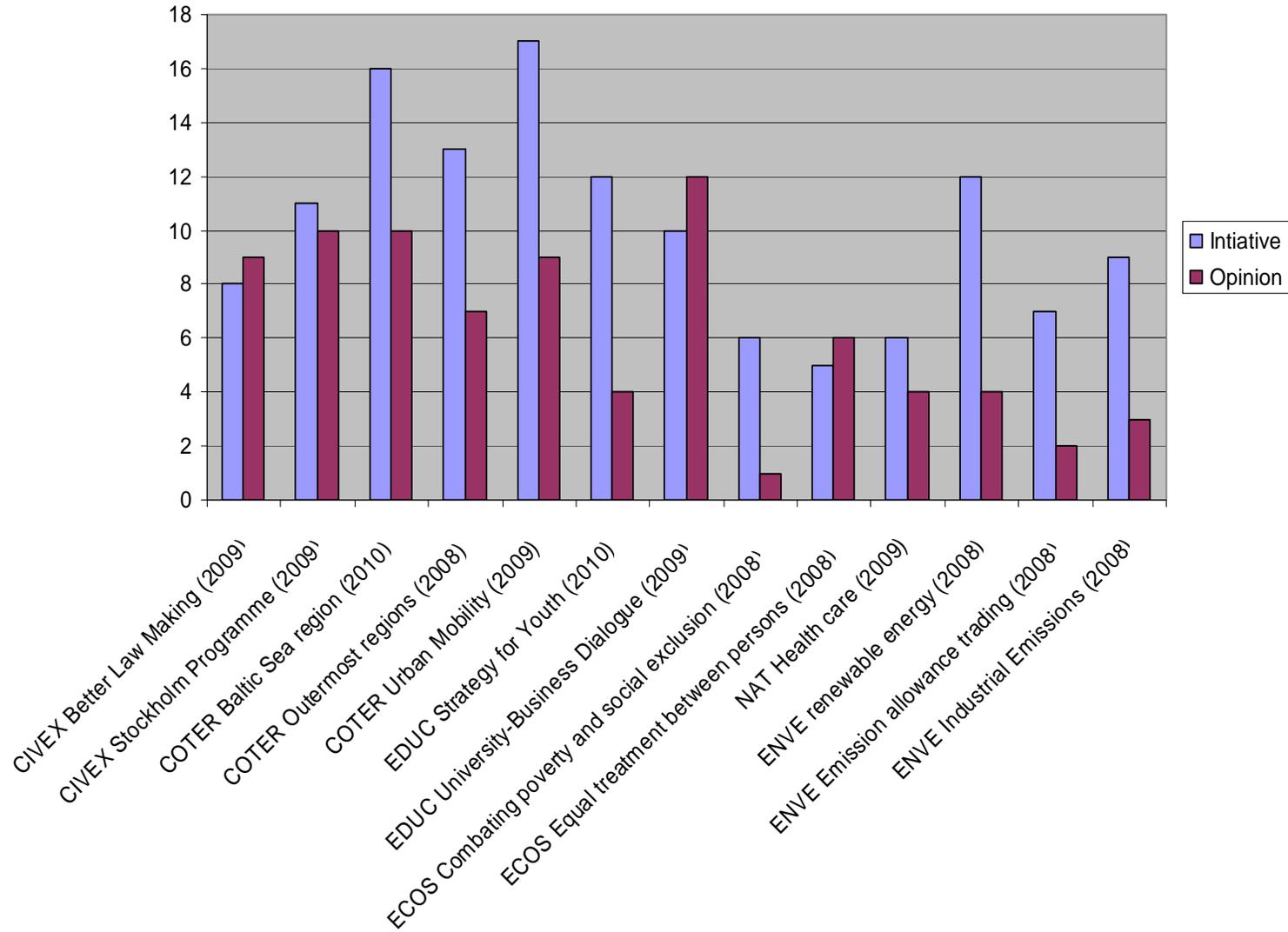
As a basic assumption we established that where the potential cross-border impact is high in the initiative and the CBC dimension reflected in the opinion is low, that is where there may be a gap in the analysis made in the opinion.

Some of the assessments are more balanced than others. For instance, the results of the assessment of optional opinions are more balanced, i.e. the grades of the proposal and of the opinion are closer. Likewise, it seems that the results of the assessment of CIVEX commission opinions are quite balanced, while those of COTER and ENVE [opinions](#) display in principle a clear gap. Indeed, those commissions do in our view deal with topics that can have an important impact on cross-border regions, but the opinions produced do not reflect sufficient consideration of the cross-border dimension. In two cases, the proposal has been graded as directly related to cross-border cooperation while the CoR does not refer to it (Opinion on Urban Mobility) or only considers few aspects of cross-border cooperation (Baltic Sea region). For two other opinions (Opinion on Industrial Emissions and Opinion on Promotion of Renewable Energy), while the impact on CBC could be relevant, the CoR deals with it in a rather limited way.

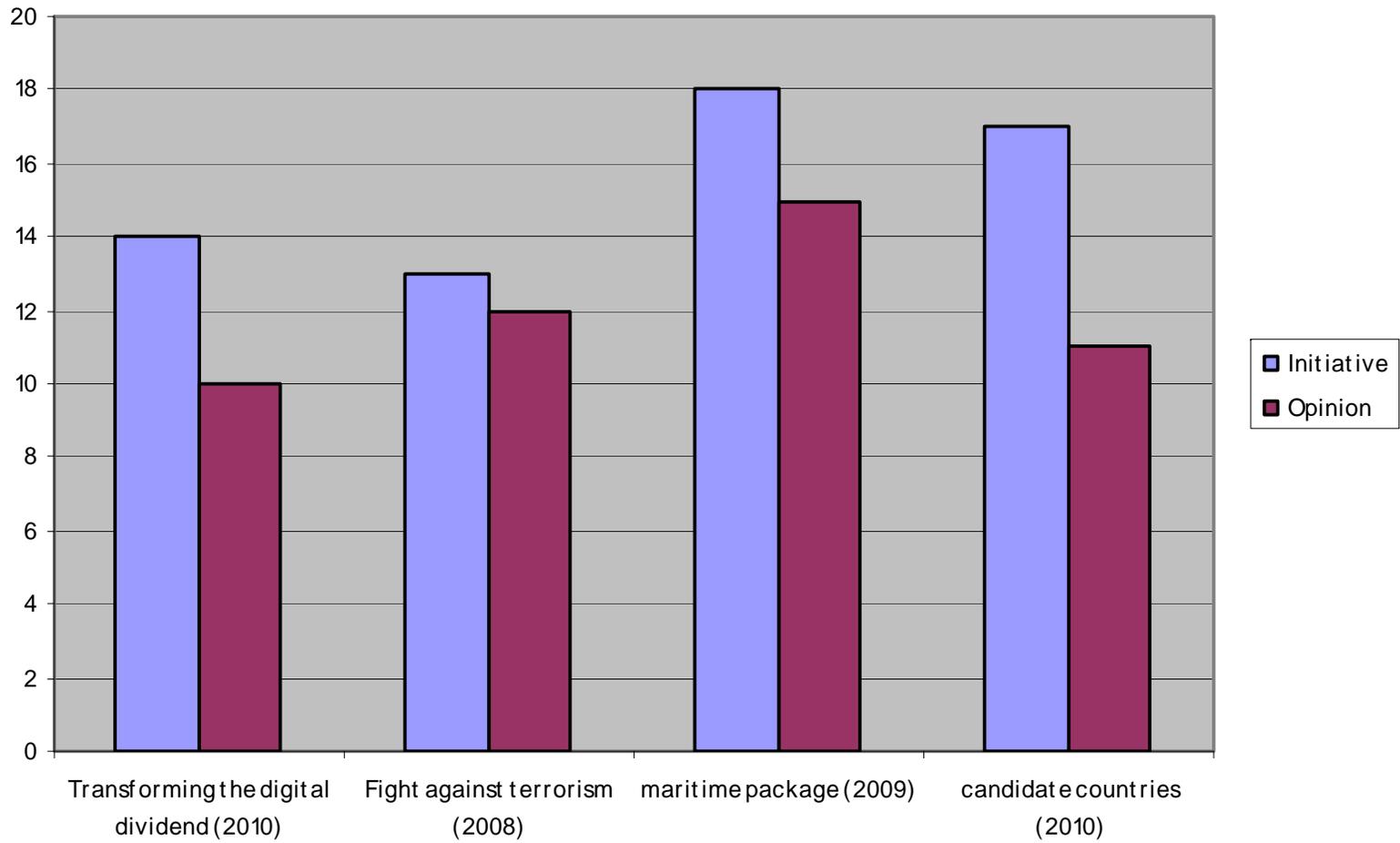
On the other hand, a positive evolution can be noted in the treatment of CBC aspects by the CoR from 2008 to 2010, as the chart shows a certain line of improvement across the years. The analysis also highlights good practices. In numerous cases, the grading of the EU initiative and the CoR opinion with scores are balanced.

Three of our assessments show that the CoR paid more attention to the cross-border aspect than one might expect according to the flagging system (Opinions on Better law making, University-Business Dialogue, and Equal treatment between persons). However, in most cases there is no explicit mention of the words “cross-border cooperation”.

### Mandatory opinions



## Voluntary opinions





# Conclusions

This report presents an analysis grid for determining the degree of impact of the EU political and legislative initiatives on cross-border cooperation. After a fairly simple, quick scan of the document, the CoR will be ready to grade the initiative and to act according to its relevance for CBC.

We have taken a line of analysis that requires “reading in between lines”: the exercise requires going beyond the explicit wording of the initiative in order to scrutinise potential impact related to CBC issues.

Common understanding of the scope of the indicators adopted by the evaluating experts is thus essential. Therefore, it will be necessary to hold explanatory meetings and distribute memos, to the people involved in the analysis. The instrument presented allows for flexibility in the definition of the indicators, but once defined, a certain continuity and consistency is required from the evaluating group. As a direct consequence of this, and in order to integrate the cross-border dimension into CoR consultative work, the questionnaire presented also offers a certain grade of flexibility. Again, here, in drafting/adapting the final questionnaire, some CBC needs to be mainstreamed within the CoR commissions in order for them to achieve sound, consistent work.